UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

JASON LOPEZ'S PLANET EARTH
LANDSCAPE, INC.[1]

Employer

and Case 31-RC-8811

LABORERS INTERNATIONAL
UNION OF NORTH AMERICA
AND ITS AFFILIATED SOUTHERN
AND NORTHERN CALIFORNIA
DISTRICT COUNCILS AND ITS
AFFILIATED LOCALS 220 and 297[2]

Petitioner

DECISION AND DIRECTION OF ELECTION

I. INTRODUCTION

Jason Lopez's Planet Earth Landscape, Inc. (the Employer) is a landscape maintenance and construction company located in Nipomo, California. On May 26, 2010,[3] the Laborers' International Union of North America and its Affiliated Southern and Northern California District Councils and its Affiliated Locals 220 and 297 ("Petitioner" or "Union"), filed a petition

[1] Name of the Employer appears as corrected at the hearing.

[2] Name of the Petitioner appears as corrected by the Amended Petition.

[3] All dates are in 2010 unless stated otherwise.

seeking to represent "all landscaping employees, laborers, equipment operators employed by the employer in all counties within the state of California," but excluding "all confidential employees, secretaries, supervisors and security guards as defined by the Act." On June 17, the Union filed a First Amended Petition where the unit sought was modified to read "all full-time and regular part-time landscaping employees employed by the Employer in all counties within the State of California," excluding "[c]onfidential employees, secretaries, and supervisors and guards as defined by the Act, as amended."

Following a pre-election hearing on June 17 and June 23 before a hearing officer, the parties filed post-hearing briefs.[4] The parties disagree on the following issues: (1) whether the Petitioner is a labor organization; (2) whether the proposed unit is appropriate; (3) whether Ruben Olguin and

[4] Notwithstanding that the Employer failed to comport fully with the Board's published Rules and Regulation for the filing of briefs, in particular Section 102.67, I recognize that the Employer has been acting *pro se* (or as the Employer self-references, *pro per*) in this matter, and that no party appears to have been substantially prejudiced by the Employer's failure. In this type of circumstance, the Board typically shows some leniency toward parties who proceed without the benefit of counsel. *Cf., Transportation Solutions, Inc.*, 355 NLRB No. 22 (2010); *LBE, Inc.*, 354 NLRB No. 115 (2009). I have therefore decided to accept and consider the Employer's brief and accord it appropriate weight.

In its brief, denominated by the Employer "Motion To Deny Laborers International Union Based On Supervisory Taint and Unfair Hearing Practices Lack of Due Process," the Employer argues that I should dismiss the instant petition because of supervisory taint. On July 16, I issued an Order treating that argument as a motion to dismiss and denying the motion as untimely. In the same Order, I also denied the Employer's request to file a response brief to the Petitioner's brief. On July 21, the Employer filed a "Reply and Request for Reconsideration of Order Denying Employer's Motion to Dismiss Petition Based on Supervisory Taint and Denying Employer's Request to File a Responsive Brief to Any Brief filed by Petitioner" that I denied on July 22, based upon its failure to raise new matters not considered in my July 16 Order.

Alberto Alvarado are supervisors within the meaning of the Act; and (4) the applicability of the construction industry formula in determining voter eligibility.

As discussed below, I find that the petitioner is a labor organization within the meaning of Section 2(5) of the Act. I further find that Petitioner's proposed unit is an appropriate one, and that Olguin and Alvarado are not statutory supervisors and are therefore included in the unit. Finally, I find that the construction industry formula is the proper formula to use when determining voter eligibility.

II. The Petitioner Is a Labor Organization

At the hearing, the Employer refused to stipulate that the Petitioner is a labor organization. In its post-hearing brief, the Employer does not specifically address this issue but instead raises various procedural issues that it impliedly argues renders a determination of Petitioner's status impossible. Petitioner contends that it is a labor organization. Perfecto Ramirez, Petitioner's labor relations representative, provided details regarding the Petitioner's organization and its established purpose.

I find that Ramirez's testimony establishes the Petitioner's status as a labor organization and that the procedural issues raised by the Employer do not preclude such a finding. Pursuant to Section 2(5), an entity is a labor or-

ganization if (1) employees participate, (2) the organization exists, at least in part, for the purpose of "dealing with" employers, (3) these dealings concern "conditions of work" or other statutory subjects such as grievances, labor disputes, wages, rates of pay, or hours of employment, and (4) if an "employee representation committee or plan" is involved, there is evidence that the committee is in some way representing the employees. *Electromation, Inc.*, 309 NLRB 990, 994 (1992).

Here, substantial record evidence supports a finding that the Petitioner is a labor organization. Petitioner has monthly meetings that employees attend, and employees vote in its internal elections, selecting officials every three years. The evidence also establishes that Petitioner exists for the purpose of dealing with employers regarding working conditions, grievances, labor disputes, wages, rates of pay, and hours of employment, and that it has existing collective-bargaining relationships with numerous employers with whom it renegotiates those contracts every three years. The Employer adduced neither evidence nor arguments to contradict this evidence. The record, therefore, establishes that Petitioner is a labor organization within the meaning of the Act.

Although the Employer notes that Ramirez did not sign the underlying representation petition, it makes no argument as to why Ramirez's not signing the petition affects the Union's Section 2(5) status. Ramirez, as a labor

relations representative for Petitioner, provided testimony that is sufficient to establish Petitioner's status, and the Employer provides no support for its inferred argument that the person who filed the representation petition must be the person who provides evidence regarding the entity's status.

The Employer also notes in its brief that it did not have the opportunity to cross-examine Ralph Velador, an organizer for the Petitioner, who testified on the first day of the hearing regarding the Petitioner's status as a labor organization. The Employer implies – though without specifically arguing – that the inability to question Velador renders the evidence insufficient to determine the Petitioner's status. I note, however, that the hearing officer appropriately struck Velador's testimony; I have not relied on it to support a finding of Petitioner's status as a labor organization. Rather, Ramirez's testimony provides a sufficient basis to make the finding, and the Employer had ample opportunity to, and in fact did, question Ramirez.

Finally, the Employer asserts that "Ramirez signed the second amended petition," which it did not receive until June 23, the second day of the hearing. The evidence, however, established that Ramirez signed only the original petition, which was filed on May 26; the first amended petition, which the evidence established was both filed and served on the Employer on June 17, six days before the hearing, was signed by Ralph Velador. There is no "second amended petition" in this case. Assuming that the Employer is

arguing that it did not receive the amended petition until June 23, the second hearing date, it made no argument how this alleged failure to receive the petition resulted in any prejudice to it.

Overall, as noted above, sufficient evidence was adduced detailing Petitioner's function and purpose to establish its status as a labor organization within the meaning of the Act; the Employer provided insufficient evidence to refute this finding.

III. The Proposed Unit Is an Appropriate One

Petitioner seeks to represent "all full-time and regular part-time landscaping employees employed by the Employer in all counties within the State of California," excluding "[c]onfidential employees, secretaries, and supervisors and guards as defined by the Act, as amended." The Petitioner contends that this is an appropriate unit. The employer provides no specific argument against this unit, nor does the Employer propose an alternative unit. As discussed below, the record evidence supports a finding that the petitioned-for unit is appropriate.

The Employer's business is a mix of landscaping/maintenance and construction work performed at both residential homes and commercial properties. The landscaping/maintenance portion of the Employer's business involves mowing and fertilizing lawns, weeding, and planting. In doing the

maintenance work, the employees use movers, blowers, hedge clippers, rakes, and brooms. The construction arm of the business involves digging trenches, installing sprinklers, grading the soil, and installing ground cover. When employees do construction work they use shovels, picks, and – relatively infrequently – the trencher and tractors.

The Employer relies on a core group of 12 employees to perform its work, which it separates into crews that usually rotate from job to job. The employees have no job classifications, and they do not require any special skills or training for their work. All employees perform both landscaping/maintenance and construction work, and all employees work at both the residential and commercial sites. Thus, the employees' positions are interchangeable, and employees are transferred from one crew to another as the need arises.

The employees perform similar work under similar working conditions. They work the same established hours of 7:00 a.m. to 3:30 p.m., and all employees takes their mid-morning and lunch breaks at the same time. The record does not contain specific information regarding wages. Jason Lopez, the Employer's owner, testified that when the employer does prevailing wage work, all employees are paid the prevailing wage rate. Otherwise their salary depends on their job performance and their longevity with the employer.

The Board does not compel a petitioner to seek any particular appropriate unit, *Overnite Transportation Company*, 322 NLRB 723, (1996), or that the unit be the only appropriate unit or the most appropriate unit; rather, the Act simply requires that the unit be "appropriate" to ensure to employees "the fullest freedom in exercising the rights guaranteed by the Act." *Bartlett Collins Co.,* 334 NLRB 484 (2001); *Morand Beverage,* 91 NLRB 409 (1950). When making a determination as to whether a petitioned-for unit is "appropriate" under Section 9(b) of the Act, "the Board's discretion in this area is broad, reflecting Congress' recognition 'of the need for flexibility in shaping the [bargaining] unit to the particular case.'" *NLRB v. Action Automotive*, 469 U.S. 490, 494 (1985) (quoting *NLRB v. Hearst Publications, Inc.,* 322 U.S. 111, 134 (1944)). If the unit sought by the petitioner is an appropriate unit, an alternative appropriate unit will not be imposed. *Dezcon, Inc.*, 295 NLRB 109, 111 (1989). In determining an appropriate unit, the Board first considers the petitioned-for unit. *P.J. Dick Contracting,* 290 NLRB 150, 151 (1988). It is only when the petitioned-for unit is not appropriate that the Board may consider an alternative proposal. *Id.*

When defining an appropriate bargaining unit, the Board focuses on whether the affected employees share a sufficient "community of interest." *Overnite,* 322 NLRB at 724. The Board considers a number of factors in determining whether a given group of employees shares a sufficient com-

munity of interest to constitute an appropriate unit, including: similarity in the scale and manner of determining wages; similarity in employment benefits, hours of work, and other terms and conditions of employment; similarity in the qualifications, skills and training of employees; frequency of contact and interchange among employees; geographic proximity; common supervision; functional integration; and history of collective bargaining. *Overnite Transportation Co.*, 322 NLRB at 724; *Ore-Ida Foods*, 313 NLRB 1016, 1019 (1994); *Kalamazoo Paper Box Corp.,* 136 NLRB 134, 136 (1962) (each unit determination must have a direct relevancy to the circumstances within which the collective bargaining is to take place).

The record evidence establishes that the employees share a strong community of interest. They possess similar skills and perform similar work under similar conditions. Employees also have substantial daily work-related contact and functional integration; they work together on common projects on a daily basis. Moreover, the employer failed to adduce evidence as to why the proposed unit was not appropriate, and did not propose – either at the hearing or in its post-hearing brief – an alternative unit. Therefore, I find that the petitioner's proposed unit is appropriate. See *Dezcon, Inc.*, 295 NLR 109, 111 (1989), holding that when making unit determinations, Board looks first "to the unit sought by petitioner. If it is appropriate, [the] inquiry ends."

IV. Ruben Olguin and Alberto Alvarado Are not Supervisors

The parties disagree as to whether Ruben Olguin and Alberto Alvarado are supervisors within the meaning of the Act. As discussed below, I find that the Employer failed to establish that either Olguin or Alvarado is a statutory supervisor.

Pursuant to Section 2(3) of the Act, "any individual employed as a supervisor" is specifically excluded from the term "employee." Section 2(11) of the Act defines the term "supervisor" to include any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action. Possession of any one of the indicia specified in Section 2(11) is sufficient to confer supervisory status on an employee, provided that authority is exercised with independent judgment on behalf of management and not in a routine manner. *See, e.g., Airline Commercial Barge Line Co.*, 337 NLRB 1070 (2002); *Browne of Houston*, 280 NLRB 1222, 1223 (1986).

The term "independent judgment" applies regardless of the supervisory function implicated. See *Oakwood Healthcare, Inc.*, 348 NLRB 686, 692 (2006). To demonstrate independent judgment, the putative supervisor "must at minimum act, or effectively recommend action, free of the control

of others and form an opinion or evaluation by discerning and comparing data." *Id.* An employee does not exercise independent judgment if his or her decisions are "dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective bargaining agreement." *Id.*

The Board construes supervisory status narrowly "because the employee who is deemed a supervisor is denied the rights which the Act is intended to protect." *Chevron Shipping Co.*, 317 NLRB 379, 380-381 (1995). It is therefore incumbent upon the party asserting that certain individuals are statutory supervisors to establish their supervisory status. Any lack of evidence is construed against the moving party. See *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 711-12 (2001). "Whenever the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia." *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Mere inferences or conclusionary statements without detailed, specific evidence of the exercise of independent judgment are insufficient to establish supervisory authority. *Sears, Roebuck & Co.*, 304 NLRB 193, 193 (1991).

To summarize, the party asserting that certain individuals qualify as statutory supervisors has the burden of proving that

> [the individuals] hold the authority to engage in any 1 of the 12 listed supervisory functions, (2) their 'exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment,' and (3) their authority is held 'in the interest of the employer.'

NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706, 713 (2001).

Here, Jason Lopez is the owner of the business; his brother, Martin Lopez, serves as a project manager. Jason Lopez testified that both men delegate work, and that he and Martin have the sole authority to hire or fire employees. Jason is also responsible for authorizing all purchases.

The Employer adduced insufficient evidence to establish that either Olguin or Alvarado engaged in any of the 12 supervisory functions with the requisite independent judgment.

The evidence establishes that Olguin works side-by-side with other employees, performing the same tasks and acting in accord with Jason Lopez's instructions. Indeed, at the hearing, Jason Lopez readily agreed to the statement that Olguin was "required to do the work in such a way that it reflects what [Jason Lopez] directed [Olguin] to do." Olguin is, at most, simply a conduit for carrying out Lopez's instructions. See *Shaw, Inc.*, 350 NLRB 354, 355 (2007) (employee who works "side by side" with other crewmembers, in accord with specifications given to him, is not a supervisor). See also *Volair Contractors, Inc.*, 341 NLRB 673, 675 (2004) (em-

ployees who direct crews in accordance with employer's instructions do not exercise independent judgment necessary for supervisory status).

Olguin testified that he neither instructs nor disciplines employees. Olguin also does not independently determine the location where crew members will work; rather, the crew simply follows a pre-determined route. There is no evidence that the Employer ever made Olguin aware that he was a supervisor, and Olguin was surprised to learn that the Employer considered him to be one. As Olguin stated, he is "just a worker." See *Volair Contractors, Inc.*, 341 NLRB 673, 675 (2004) (Board declines to find individuals to be supervisors based on alleged authority that they were never notified that they possessed).

At the hearing, the Employer emphasized the fact that Olguin is the only employee permitted to drive a company truck. Such activity, however, absent evidence that Olguin engages in any of the primary supervisory activities, is insufficient to establish that Olguin is a supervisor. *J.C. Brock Corp.*, 314 NLRB 157, 159 (1994) (secondary indicia of supervisory status cannot establish such status in the absence of primary indicia).

The evidence did not establishe that Alvarado is a supervisor. Jason Lopez's testimony consisted of ambiguous or conclusionary statements. Alvarado did not testify at the hearing and therefore did not provide supporting evidence. See *Sears, Roebuck & Co.*, 304 NLRB 193, 193 (1991) (finding

no supervisor status where putative supervisors did not testify at hearing and evidence consisted solely of "conclusionary statements . . . without supporting evidence.")

While Jason Lopez stated that Alvarado has the authority to interview and to recommend employees for hire, he could not testify to any specific example of Alvarado performing this function. See *Volair Contractors, Inc.*, 341 NLRB 673, 675 (2004) (general testimony that an individual can recommend applicants for hire is not sufficient evidence of supervisor status). Similarly, while Lopez testified, generally, that Alvarado exercises Section 2(11) indicia, he could not testify as to any specific instance where Alvarado disciplined or effectively recommended the discipline of an employee, effectively recommended the employer fire an employee, or effectively recommended that an employee receive a raise. Again, there was no evidence to establish Alvarado's supervisory status. See *American Radiator & Standard Sanitary Corp.*, 119 NLRB 1715, 1718 (1958) ("Conclusionary statements such as the assertion that these [putative supervisors] tell employees in their field of activity 'what to do, and when and how to do it' do not, without supporting evidence, establish supervisory authority.").

Lopez testified that he "believes" Alvarado earns more than the other employees, but he could not document the difference. Even if true, however, this fact is insufficient to determine his status as a supervisor.

Lopez testified as to only one specific instance where he held Alvarado accountable for employees' work. Lopez testified that he sent Alvarado home without pay after employees failed to finish work on a project in Santa Barbara. However, this isolated incident, without more, is insufficient to establish supervisory status. See *Highland Telephone Cooperative*, 192 NLRB 1057, 1058 (1971) (isolated exercise of authority is insufficient to establish supervisory status).

In sum, the Employer has failed to adduce evidence, other than ambiguous or conclusory statements, establishing that Olguin or Alvarado perform any supervisory functions or that either does so with independent judgment. I therefore find that neither is a supervisor within the meaning of the Act.

V. The Construction Industry Formula Is Appropriate for Determining Voter Eligibility

At the hearing, the Employer objected to the applicability of the construction industry eligibility formula as set forth in *Daniel Construction Co.*, 133 NLRB 264 (1961), modified at 167 NLRB 1078 (1967), reaffirmed and further modified in *Steiny & Co.*, 308 NLRB 1323 (1992). The Employer did not specify his objections at the hearing. Likewise, in its post-hearing brief, the Employer set forth no argument to support its objection to the

Daniel/Steiny formula. The Union stated, at the hearing, that it desired "to keep the *Daniels* formula."

The *Daniel/Steiny* formula requires that, in addition to those employees hired and working on the eligibility date, also eligible to vote are those in the unit who have been employed for a total of 30 working days or more within the 12 months preceding the eligibility date for the election or who have had some employment in those 12 months and have been employed for 45 working days or more within the 24-month period immediately preceding the eligibility date, and who have not been discharged for cause or have quit voluntarily prior to the completion of the last job for which they were employed. *Daniel Construction Co.*, 133 NLRB 264 (1961), modified at 167 NLRB 1078 (1967), reaffirmed and further modified in *Steiny & Co.*, 308 NLRB 1323 (1992).

In establishing this formula, the Board noted that in the construction industry, many employees experience intermittent employment and may work for short periods on different projects for several different employers in a year. *Daniel Construction*, 133 NLRB at 265-66. The Board, therefore, established the eligibility formula set forth above to insure that all employees with a reasonable expectation of future employment with an employer in the construction industry would have the fullest opportunity to participate in a representation election.

The employer need not be primarily a construction industry employer for the *Daniels/Steiny* formula to apply. The Board has found the formula relevant when the employer's year round performance of construction work is more than de minimis or incidental and is integral to the employer's overall work. See *The Cajun Co., Inc.*, 349 NLRB 1031, 1033-34 (2007); *Turner Indus. Group, LLC*, 349 NLRB 428, 434 (2007).

Here the evidence establishes that the use of the *Daniel/Steiny* formula is appropriate. Construction work is a substantial and integral part of the Employer's business, consisting of 60% of its activity. The Employer's hiring pattern is also similar to that of the construction industry: it lays off employees when the work decreases, and it recalls employees, often the same ones, when the work increases. See *Turner Indus. Group*, 349 NLRB at 435 (applying *Daniels/Steiny* formula where employer routinely recalls former employees when the workload increases).

Thus, because the evidence shows that the employer performs a substantial amount of construction work, it is appropriate to use the *Daniels/Steiny* formula to determine voter eligibility.

VI. CONCLUSION

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.[5]

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.[6]

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

[5] While the Hearing Officer, initially, advised the parties that certain pertinent sections of the Representation Case Handling Manual were not publicly available, he misspoke. The Representation Case Handling Manual is available to the public on the Agency's public website: http://www.nlrb.gov/publications/manuals/r_-_casehandling_manual_(II).aspx. Further, the pertinent sections to which he referred were made part of the record prior to the hearing's close.

[6] The Employer, Jason Lopez's Planet Earth Landscape, Inc., is a California corporation with a place of business in Nipomo, California, where it is engaged in the business of providing landscaping services to both commercial and residential customers. Within the past 12 months, a representative period, the Employer's gross revenues from all sales or performance of services equaled or exceeded $500,000, and during the same period the Employer purchased and received goods or services directly from outside California valued in excess of $5,000. The Employer, therefore, meets the Board's statutory and discretionary jurisdictional standards. *Marty Levitt,* 171 NLRB 739 (1968).

Included: All full-time and regular part-time landscaping employees employed by the Employer in all counties within the State of California.

Excluded: Confidential employees, secretaries, and supervisors and guards as defined by the Act, as amended.

I find that Ruben Olguin and Albert Alvarado are not supervisors as defined by Section 2(11) of the Act and are therefore included in the above Unit.

There are approximately 12-to-20 employees in the Unit found appropriate.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the Unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the Laborers' International Union of North America and its Affiliated Southern and Northern California District Councils and its Affiliated Locals 220 and 297. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Director will issue subsequent to this Decision.

1. Voting Eligibility:

Eligible to vote in this matter are those in the unit who were employed during the payroll period ending immediately before the date of this decision, including employees who did not work during that period because they

were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition to those employees hired and working on the eligibility date, also eligible to vote are those in the Unit who have been employed for a total of 30 working days or more within the 12 months preceding the eligibility date for the election or who have had some employment in those 12 months and have been employed for 45 working days or more within the 24-month period immediately preceding the eligibility date, and who have not been discharged for cause or have quit voluntarily prior to the completion of the last job for which they were employed.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

2. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses,

which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the ***full*** names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by the Region to assist in determining an adequate showing of interest. The Region shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the NLRB Region 31 Regional Office, 11150 W. Olympic Boulevard, Suite 700, Los Angeles, California 90064-1824, on or before **August 25, 2010**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional office by electronic filing through the Agency's website,

www.nlrb.gov,[7] by mail, by hand or courier delivery, or by facsimile transmission at (310) 235-7420. The burden of establishing the timely filing and receipt of this list will continue to be placed on the sending party. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of three working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Ser-*

[7] To file the eligibility list electronically, go to www.nlrb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Regional, Subregional and Resident Offices** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the eligibility list, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, www.nlrb.gov.

vices, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **September 1, 2010**. The request may be filed electronically through the Agency's web site, www.nlrb.gov,[8] but may not be filed by facsimile.

DATED at Los Angeles, California this 18th day of August, 2010.

James J. McDermott, Regional Director
National Labor Relations Board
Region 31

[8] To file the request for review electronically, go to www.nlrb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, www.nlrb.gov.

FORM NLRB-877

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

JASON LOPEZ'S PLANET EARTH LANDSCAPING, INC. Employer and LABORERS INTERNATIONAL UNION OF NORTH AMERICA AND ITS AFFILIATED SOUTHERN AND NORTHERN CALIFORNIA DISTRICT COUNCILS AND ITS AFFILIATED LOCALS 220 AND 297 Petitioner	Case No. 31-RC-8811

DATE OF MAILING August 18, 2010

AFFIDAVIT OF SERVICE OF: DECISION AND DIRECTION OF ELECTION (*Also Waiver Forms)

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that, on the date indicated above, I served the above-entitled document(s) by postpaid certified mail upon the following persons, addressed to them at the following addresses:

Served by regular mail:

* Erik Benham **(For the Employer)**
Jason Lopez's Planet Earth Landscape Inc.
2122 S. Hutton Road
Nipomo, CA 93444

Jason Lopez
Jason Lopez's Planet Earth Landscape, Inc.
2122 S. Hutton Road
Nipomo, CA 93444

Jason Lopez
Jason Lopez's Planet Earth Landscape, Inc.
P.O. Box 904
Pismo Beach, CA 93448

* Carlos R. Perez, Esq. **(For the Petitioner)**
Reich, Adell & Cvitan
2670 North Main Street, Suite 300
Santa Ana, CA 92705

Perfecto Ramirez, Organizer
Ralph Velador, Organizer
Laborers International Union of North America &
its affiliated Southern & Northern California District
Councils & its affiliated Locals 220 and 297
4401 Santa Anita Avenue, Suite 214
El Monte, CA 91731

Gary A. Alameda
Laborers' Local 297
117 Pajaro Street
Salinas, CA 93901

Manuel Monsibias
Laborers' Local 220
2201 "H" Street
Bakersfield, CA 93301

Subscribed and sworn to before me this 18th day of August, 2010.	DESIGNATED AGENT **NATIONAL LABOR RELATIONS BOARD**